JUDGMENT SHEET

IN THE PUNJAB SERVICE TRIBUNAL, LAHORE

Appeals No.3719, 3720, 3827 to 3840, 3857 to 3862, 3979 to 3982, 4464 to 4469 & 4765 to 4769 of 2015

MUHAMMAD YAR WALLANA, MEMBER-I

1. ***Parveen Shad***, wife of Rehmat Ali Shad, SST (Science), Govt. High School 37-SP, District Pakpattan (Appeal No.3719/2015).
2. ***Muhammad Ramzan Khan***, S/o Shan Muhammad, SST (Science), Govt. High School, 1/E.B, District Pakpattan (Appeal No.3720/2015).
3. ***Faisal Mehmood***, S/o Ghulam Mehmood, EST (Science), Govt. M.C High School Istaqlalabad, District Sargodha (Appeal No.3827/2015).
4. ***Imtiaz Ahmad***, S/o Sheikh Muhammad Ali, EST (Science), Govt. City High School, District Bahawalnagar (Appeal No.3828/2015).
5. ***Muhammad Ilyas***, S/o Talab Hussain, SST (Science), Govt. High School, 253/W.B, District Lodhran (Appeal No.3829/2015).
6. ***Malka Zaib-ul-Nisa***, daughter of Muhammad Suleman, SST (Science), Govt. High School, Bucheki, District Nankana Sahib (Appeal No.3830/2015).
7. ***Muhammad Safdar***, SST (Science), Govt. Comprehensive Higher Secondary School, Samandabad, District Faisalabad (Appeal No.3831/2015).
8. ***Muhammad Arshad***, S/o Nawab Din, SST (Science), Govt. High School, Kot Heera Singh, District Pakpatta (Appeal No.3832/2015).
9. ***Muhammad Latif***, S/o Falak Sher, SST (Science, Govt. High Secondary School, Dong Bonga, District Bahawalnagar (Appeal No.3833/2015).
10. ***Syed Zahid Hussain***, S/o Syed Mushtaq Hussain, SST (Science), Govt. Higher Secondary School, Khudian Khas, District Kassur (Appeal No.3834/2015).
11. ***Muhammad Israr***, S/o Faiz Muhammad, SST (Science), Govt. City High School, District Bahawalnagar (Appeal No.3835/2015).

12. ***Muhammad Zubair***, S/o Muhammad Munir, SST (Science), Govt. High Secondary School, District Bahawalnagar (Appeal No.3836/2015).
13. ***Nadeem Sarwar***, S/o Muhammad Sarwar, SST (Science), Govt. High Secondary School, 20/E.B, District Pakpattan (Appeal No.3837/2015).
14. ***Syed Ghulam Qadir***, S/o Muhammad Ameer, EST (Science), Govt. Elementary School, 67-E/B, District Pakpattan (Appeal No.3838/2015).
15. ***Muhammad Islam***, S/o Muhammad Ashraf, SST (Science), Govt. High School, 351-E/B, District Pakpattan (Appeal No.3839/2015).
16. ***Naseem Kokab***, wife of Ghulam Haider, SST (Science), Govt. M.C Girls High School, Ghala Mandi, District Pakpattan (Appeal No.3840/2015).
17. ***Abdul Shakoor Tahir***, S/o Muhammad Ibrahim, SST (Science), Govt. M.C Boys High School, District Nanakana Sahib (Appeal No.3857/2015).
18. ***Ghulam Abbas***, S/o Ghulam Haider, SST (Science), Govt. High School, 482/TDA, District Bhakar (Appeal No.3858/2015).

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19. ***Asmat Ullah***, S/o Hadayat Ullah, SSE (Science), Govt. High School, Rukkan, District Mandi Bahauddin (Appeal No.3859/2015).

20. ***Tariq Mehmood***, S/o Ahmad Yar, SST (Science), Govt. High School, 52/E.B, District Pakpattan (Appeal No.3860/2015).

21. ***Sajjad-ul-Haq***, S/o Abdul Rahim, SSE (Science), Govt. Elementary School, 361/G.B, District Toba Tek Singh (Appeal No.3861/2015).

22. ***Iftakhar Alvi***, S/o Abdul Nabi, SST (Science), Govt. M.C Boys High School, District Nankana Sahib (Appeal No.3862/2015).

23. ***Mudassar Iqbal Bajwa***, S/o Zafar Iqbal Bajwa, SST (Science), Govt. High School Mandi Thro, District Sialkot (Appeal No.3979/2015).

24. ***Tajamal Hussain***, S/o Bashir Ahmad, SST (Arts), Govt. High School No.1, Shan Kot, Nankana Sahib (Appeal No.3980/2015).

25. ***Shabana Ashraf***, wife of Tajamal Hussain, EST (Arts), Govt. Girls Elementary School, Chak No.88-Shah Kot, Nankana Sahib (Appeal No.3981/2015).

26. ***Muhammad Awais Karni***, S/o Muhammad Jameel, SST (Arts), Govt. High School No.1, Shah Kot, Nankana Sahib (Appeal No.3982/2015).

27. ***Ch. Hafeez-ur-Rehman***, S/o Ch. Niaz Hussain, SST (Arts), presently working as Assistant Education Officer (M-EE), Ravi Town, Lahore City, R/o House No.237, Sector D-II, Block No.3, Green Town, Lahore (Appeal No.4464/2015).

28. ***Tanveer Safdar***, S/o Safdar Khan, SST (Science), Govt. High School No.1, Shah Kot District Nankana Sahib (Appeal No.4465/2015).

29. ***Ghulam Fareed***, S/o Nawab Din, SST (Science), Govt. High School No.1, Shah Kot, Nankana Sahib (Appeal No.4466/2015).

30. ***Shamsher Ahmad Virk***, S/o Muhammad Ashraf, SST (Science), Govt. High School, Bhagowal, District Sialkot (Appeal No.4467/2015).

31. ***Haq Nawaz***, SST (Science), Govt. High School, Yosaf Shah, District Bhakkar (Appeal No.4468/2015).

32. ***Syed Rahim Shah***, S/o Qutab Ali Shah, SST (Science), Govt. High School, Jaman Shah, District Pakpattan (Appeal No.4469/2015).

33. ***Muhammad Afzal***, S/o Abdul Haq, SST (Science), Govt. Higher Secondary School, Chowk Sarwar Shaheed, District Muzaffargarh (Appeal No.4765/2015).

34. ***Shahid Jameel***, S/o Muhammad Sharif, SST (Science), Govt. High School, Malik Pur Mirza, District Gujrat (Appeal No.4766/2015).

35. ***Muhammad Boota Aamir***, S/o Mian Ghulam Rasool, SST (Science), Govt. Boys High School, Ferozabad, District Gujrat (Appeal No.4767/2015).

36. ***Ehsan Ali***, S/o Noor Muhammad, SST (Science), Govt. High School, Ali Pur Chatta, District Gujranwala (Appeal No.4768/2015).

37. ***Mirza Muhammad Azam***, S/o Muhammad Boota, SST (Science), Govt. High School Khanpur Sayyadan, Tehsil Pasrur, District Sialkot (Appeal No.4769/2015).

........**Appellants**

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2. Secretary School Education Department, Government of the Punjab, Civil Secretariat, Lahore.

3. District Accounts Officer, Pakpattan (Appeals No.3719, 3720, 3837, 3838, 3839, 3840, 3860, 4468 & 4469 of 2015).

4. District Accounts Officer, Sargodha (Appeal No.3827 of 2015)

5. District Accounts Officer, Bahawalnagar (Appeals No.3828, 3833, 3835 & 3836 of 2015).

6. District Accounts Officer, Lodhran (Appeals No.3829 & 3831 of 2015).

7. District Accounts Officer, Nankana Sahib (Appeals No.3830, 3832, 3857, 3862, 3980, 3981, 3982, 4465 & 4466 of 2015).

8. District Accounts Officer, Kasur (Appeal No.3834).

9. District Accounts Officer, Bhakkar (Appeal No.3858).

10. District Accounts Officer, Mandi Bahauddin (Appeal No.3859).

11. District Accounts Officer, Toba Tek Singh (Appeal No.3861).

12. District Accounts Officer, Sialkot (Appeals No.3979, 4467 & 4769 of 2015).

13. District Accounts Officer, Gujranwala (Appeals No.4765 & 4768 of 2015).

14. District Accounts Officer, Gujrat (Appeals No.4766 & 4767 of 2015).

......Respondents

Appellants by:
- Rizwana Anjum Mufti, Advocate, counsel for the appellants.

Respondents by:
- Mr. M. Yasin Bajwa, District Attorney.
- Mr. Zubair Khan Shahid, Deputy Secretary alongwith Ms. Ayesha Yasmin, Law Officer for Secretary School Education Department.

Date of hearing: 14.03.2018
Date of announcement: 16.04.2018

JUDGMENT

MUHAMMAD YAR WALLANA, MEMBER. Through this consolidated judgment I intend to dispose of above captioned thirty seven appeals because in all the appeals similar question of pay protection for the period the appellants remained serving on contract basis is involved and the question of law is also similar in all these appeals.

2. Brief facts of the cases as gathered from the available record are that the appellants are aggrieved by order dated 03.04.2013 of the

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Chief Secretary, Punjab, whereby benefit of pay protection for the period the appellants remained serving on contract basis was regretted. Feeling aggrieved, the appellants filed writ petition No.21201/2013 before the Hon'ble Lahore High Court, Lahore, which was disposed of vide order dated 08.07.2014 with the direction to Chief Secretary Punjab to decide the matter after affording right of hearing to the appellants. Consequently, the Chief Secretary Punjab, after affording right of hearing, rejected the same vide impugned order bearing No.SO(SE-III)7-316/2013. Hence, these appeals are filed under section 4 of Punjab Service Tribunal Act, 1974, on the grounds maintained thereunder.

3. The learned counsel for the appellants argued that many employees of School Education Department, Higher Education Department and Health Department appointed on contract basis like present appellants, later on having been regularized were granted benefit of pay protection by including annual increments into their pay earned by them during contractual period but the present appellants were discriminated in total disregard of the policies adopted by Govt. of the Punjab and law on the subject matters. Learned counsel for the appellant relied upon ***2008 SCMR 14, 2014 PLC (CS) 1068, 2014 SCMR 1289, PLJ 2017 Tr.C (Services) 176*** *and judgment dated 30.09.2016 of this Tribunal passed in Service Appeals No.3732, 3735 and 3736 of 2015*.

4. On the other hand the learned District Attorney assisted by the departmental representatives submitted that the matter of pay protection of the contractual employees has already attained finality by the courts as in compliance with the judgment of Hon'ble Lahore High Court, Lahore dated 04.06.2012 passed in W.P.No.26930/2010 a committee was constituted under the chairmanship of Secretary Law &

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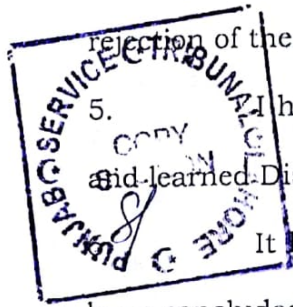
Parliamentary Affairs Department and in view of recommendations of the committee the Chief Secretary Punjab regretted the said benefit to the appellants by rejecting their representations vide order dated 03.04.2013, which order was assailed through W.P.No.21201/2013, where again a direction was issued to Chief Secretary Punjab for redressal of grievance of the said petitioners, which was again turned down having no force. Therefore, learned District Attorney submitted for rejection of these appeals.

5. I have heard arguments of learned counsel for the appellant and learned District Attorney and have examined the record.

6. It had been argued by the respondents that the matter had been concluded by the Hon'ble apex court and that the appellants were barred from making the claim of pay protection through these service appeals. In response to this argument, the learned counsel for the appellant had brought on record copy of order dated 12.11.2009, passed by the Hon'ble apex court in Human Rights Cases No.840-P & 126 of 2009, whereunder the Hon'ble apex court had allowed the petitioners to avail remedies by invoking planery jurisdiction under the ordinary law and it is why these appeals had been preferred by the appellants, which are maintainable as the question involved in all these appeals pertains to terms and conditions of the service of the regular employees who were initially employed on contract basis.

7. It was later part of paragraph No.6 of notification of regularization of the appellants vide order dated 19.10.2009, which had infact infringed their right of pay and protection on regularization of their services as their pay had been fixed at the initial of their respective pay scales and the increments earned by them during the contract appointment period were converted into personal allowance, which had

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given them the cause to invoke jurisdiction of this Tribunal under section 4 of Punjab Service Tribunal Act, 1974. They had also been held not entitled to the payment of 30% Social Security benefit in lieu of pension or any other pay package being drawn by them. The learned counsel for the appellant had submitted that the appellants were not claiming payment of 30% Social Security benefit or its consideration for the purposes of pension and other allowances, but the appellants had been aggrieved of the later part of the aforesaid notification for the reason of fixation of their pay at the basic pay scale and at initial stage of respective pay scale. This Tribunal in Muhammad ***Altaf's case reported as PLJ 2017 Tr.C (Services) 176 and 2017 TD (Services) 335*** has held that in case of regularization of services of contract employees initially appointed against regular posts they have a right of regularization of their services from the dates of initial appointments and they are entitled for all service benefits like earning of increments, upgradation and maintaining of seniority in service on the basis of such regularization by giving effect to the dates of their initial appointments and not from the date of regularization of their services. On the issue of seniority of the civil servants who were initially appointed on contract basis and later on regularized and made civil servants, the Hon'ble apex court in a case reported as ***2014 SCMR 1289*** at proper page 1312 has observed as under:-

> *"We find that even in service matter while considering the seniority of civil servants, the seniority is reckoned from the date of initial appointment and not from the date of confirmation or regularization."*

The Hon'ble apex court in a judgment reported as ***2014 PLC (CS) 1068*** on the same issue has held as under:-

> ***"(C) Civil Service***

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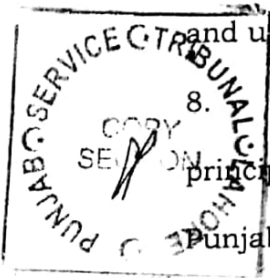
----Contract appointment---Regularization of service----scope---- Regularization in service was not an initial recruitment but the confirmation of an existing employment."

It has been consistently held by the Hon'ble superior courts and by this Tribunal that regularization of services is not to be construed as an initial recruitment, rather it is to be construed as confirmation of existing employment, hence it follows that on confirmation of existing employment the period already served by the employees would also entitle them to the benefits of pay in the form of increments, seniority and upgradation etc as are normally available to the civil servants.

8. The appellants have also claimed pay protection on the principle of equal treatment of equally placed persons as Govt. of the Punjab while regularizing the services of contract employees in School Education, Higher Education and Health Departments had granted the right of pay protection from the date of initial appointment on contract basis and not from the date of regularization of services. The copy of Notification No.SO(S-IV)2-31/2004 dated 23.12.2004, issued by Govt. of the Punjab, School Education Department, Notification No.SO(DENTAL) 10-03/2001 dated 17.09.2007 of Govt. of the Punjab, Health Department, Notification No.S.O(CE-II)1-6/2009 dated 13.08.2009 of Govt. of the Punjab, Higher Education Department and Notification No.(SC)REG (BS-18) 2009 dated 18.08.2009 of Govt. of the Punjab, Health Department had been got confronted to the departmental representative of the respondents in order to require specific reply, but it could not be controverted that Govt. of the Punjab in cases of employees of School Education, Higher Education and Health Departments had granted this benefit to the contract employees on regularization of their services. Hence, the case of the present appellants of unlawful discrimination is completely made out from the divergent position of the

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same government vis-à-vis employees of different departments for granting right of pay protection on regularization of services of their employees.

9. For the reasons recorded above, the instant appeals are made out, which are accepted. The orders dated 03.04.2013 and 16.06.2015 are declared to be of no legal effect and are accordingly set aside. The appellants are held entitled to the benefits of pay protection treating them at par with the similarly placed civil servants of School Education, Higher Education and Health Departments to whom same benefit had been allowed by Govt. of the Punjab as no valid reason exists for their exclusion from same benefit of pay protection. However, it is clarified that as they would be allowed increments from the date of their initial appointments on contract basis, they would not be entitled to payment of 30% of Social Security benefit in lieu of pension or any other pay package.

10. The office is directed to send a copy of this order to the departmental authority concerned as provided under Rule 21 of Punjab Service Tribunal (Procedure Rules) 1975.

MEMBER-I

ANNOUNCED
16.04.2018

Certified that this judgment consists of 08 pages and each page has been dictated, read and signed by me.

MEMBER-I